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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,525	02/23/2004	Kenyon A. Hapke	1508.061	1499
23598 7590 12/12/2008 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER				
RIGGLEMAN, JASON PAUL				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
12/12/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary

Application No.

10/784,525

Applicant(s)

HAPKE, KENYON A.

Examiner

JASON P. RIGGLEMAN

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-10, 12, 13, 15, 18-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-10, 12-13, 15, 18-21, and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Applicant's reply filed on 8/22/2008 is acknowledged. Current pending claims are 1-2, 4-10, 12-13, 15, 18-21, and 23-27. Claims 1, 4, 12, 18, and 20 have been amended. Claims 3, 11, 14, 16-17, and 22 are cancelled.

Response to Arguments

2. The applicant's arguments with respect to the 103 (a) rejection of claim 1 being unpatentable by Buser et al. (US Patent No. 5881746) has been considered. The applicant lists 5 items and then argues the points -- the items are not in the claims. The applicant refers to a "motorized gasket compression system" which is not claimed; therefore, this argument is moot and not commensurate in scope with the claims. Applicant's arguments on pg. 2 list items not in claims and cannot be considered since they are not commensurate in scope with the claims. Assuming the applicant is attempting to argue against the application of Buser that the Fig. 3 dual-direction arrows do not teach automatic closing. The applicant attempts to discount the teaching of arrows of Fig. 3 of Buser et al. by stating that the disclosure teaches away from this limitation and that it is not consistent with the limits of enablement. The applicant attempts to do this merely by stating the positive teachings of the specification of Buser et al.; however, this is not persuasive since it does not "explain away" the double arrows of Fig. 3 which certainly teaches/suggests such an invention. To state that "the right-to-left arrow in this case indications return motion of the closure bracket 33" is merely the *opinion* of the applicant.

3. The rejection is maintained; however, the amendments have forced a new grounds of rejection for these claims (claim 12 argument; therefore, is moot). Also, the applicant has argued

against the 103 (a) rejection of claims 5, 14, and 24-25 on the grounds that Burnett teaches a mercury switch which is actuated by an angle of the door and not a separation of latch components since such “a switch would not necessarily indicate whether the latch is engaged or not”. Examiner asserts that one of ordinary skill in the art would find the teaching sufficient to make the combination. Further, the applicant’s arguments are piecemeal and not commensurate in scope with claims. The applicant has argued against the 103 (a) rejection of claims 7 and 16; however, the applicant’s arguments are piecemeal since the combination anticipates the claimed invention.

4. It was stated previously, in regards to claim 24, that the controller logic and controller method are not given patentable weight since the claimed invention is an apparatus and not a method. The applicant has cited an *isolated* piece of case law refuting this; however, this is not persuasive.

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejection is maintained on these grounds.

6. The applicant states that the Ellingson reference “teaches away” from modify Buser; however, provides no support for this statement. Note: “high-compliance dishwasher gaskets” are not discussed in the original specification.

7. The applicants arguments with respect to claim 12 are -- based upon the limitation “a dishwasher controller allowing initiation of a wash cycle only after generation of the closure

signal and receipt of the signal from the switch". This is clearly a method step programmed into the controller. Any programmable controller anticipates the claim since it can be re-programmed to perform the desired step. It was stated previously, in regards to claim 24, that the controller logic and controller method are not given patentable weight since the claimed invention is an apparatus and not a method. The applicant has cited an *isolated* piece of case law refuting this; however, this is not persuasive. It should be noted that with each amendment the applicant's claims appear to be moving further away from patentable apparatus claims and further towards quasi-method claims. Further, the claims bear little resemblance to the applicant's specification and drawings. The applicant's argument that there is not motivation to combine is not understood. Additionally, upon further review, claims 10, 18, and 26-27 have been rejected -- see below.

8. In regards to the argument of claim 20, clearly the limitations are merely control method steps and are not adding patentable subject matter. See above. The rejection is maintained.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-2, 4, 6-9, 12-13, 15, 19-21, and 23 are rejected under 35 U.S.C. 103 (a) as being unpatentable by Buser et al. (US Patent No. 5881746) in view of Ellingson et al. (US Patent No. 4510777).

11. Buser et al. teaches a dishwashing machine which has a electric actuator-operated latch that releasably locks the door in a closed position, Fig. 3 (note arrows). The latch is operated by a timer-controlled switching assembly of the machine, so as to release the door at the end of the rinsing cycle (Column 3, Lines 31-41). The drying cycle is effected through circulation of ambient air within the washing compartment through the partially-open door. The door pivots between a close position (drying position), visually covering the washing chamber, and seal position (washing position), in addition to an open position (loading position). The compression of the gasket (seal 31) in the seal position is inherent for water-tight dishwashing machines. Alternatively, the door pivots between a vent position (partially-open drying position) and close position (washing position), in addition to an open position (loading position). The latch has an electric actuator mounted in the top portion of the door, Figs. 3-4. The dishwasher comprises a washing chamber having a door movable between an open position and a closed position. The latch includes an electric motor 32, that moves the door between the washing position and the drying position, having a bracket 83. The latch releasably retracts and engages behind the a lock in the door in a washing position. The engagement of the lock effectively acts as a force limiter limiting a force of closure of the door between the close position and the seal position. The door is releasably held in the drying position by a detent (spring) of the lock. The electric actuator is mounted on the washing chamber. A control system controls the washing/drying operation cycles of the washing machine by operating the door motor (Column 3, Lines 54-58). (Note: closing the door for washing reads on moving the door from an open to a closed position or an open to a sealed, etc.).

12. Buser et al. does not teach a sensor sensing the door in the close position to allow the timer controller to control the electric actuator to move the door from the close position to the seal position; however, Ellingson et al. teaches a washing machine in which a microcontroller is programmed to allow an electric solenoid to actuate the door latch lever to lock the door in a seal position once it has been sensed in closed position (Column 7, lines 27-44) and claim 1 of Ellingson et al. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al. with Ellingson et al. to create a dishwashing machine which is has an automatically locking door.

13. In regards to claim 8, Buser et al., as modified by Ellingson, does not teach the electric actuator is mounted on the door and releasably engaging the washing chamber; however, it has been held that reversal of parts would have been obvious (*In re Gazda* 104 USPQ 400). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al., as modified by Ellingson, to create a dishwashing machine in which the electric actuator is mounted on the door and releasably engages the washing chamber.

14. In regards to claims 4, 13, 21, and 23, Buser et al., as modified by Ellingson, does not a manual latch to open the door; however, it has been held that an obvious choice in design is not patentable (*In re Kuhle* 188 USPQ 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al., as modified by Ellingson, to create a dishwashing machine in the user has the ability to manually control the opening of the door such as to add dishes or halt washing.

15. Claims 10, 18, and 26-27 are rejected under 35 U.S.C. 103 (a) as being unpatentable by Buser et al. (US Patent No. 5881746) in view of Ellingson et al. (US Patent No. 4510777), as

applied to the 103 (a) rejection of claims 1, 12, and 20-21, above, and further in view of Spong et al. (US Patent No. 6811236).

16. Buser et al. as modified by Ellingson et al. does not teach a “force” sensor sensing an opening force on the door to cause the electric actuator to move the door from the seal toward the open position; however, Spong et al. (Column 5, Lines 0-40), Fig. 2. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al. as modified by Ellingson with Spong et al. to create a washing machine in which the user can easily overcome the relatively large force needed to open the door from a compressed seal state to achieve the expected result (Column 1, Lines 62-68) of Spong et al.

17. Claims 5 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buser et al. (US Patent No. 5881746) in view of Ellingson et al. (US Patent No. 4510777) and further in view of Burnett (US Patent No. 6295004).

18. Buser et al. does not a manual latch to open the door; however, it has been held that an obvious choice in design is not patentable (*In re Kuhle* 188 USPQ 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al. to create a dishwashing machine in the user has the ability to manually control the opening of the door such as to add dishes or halt washing.

19. Buser et al., as modified by Ellingson, does not teach a switch which signals that the latching portions have released the door of the dishwasher nor a door closed sensor; however, Burnett teaches a dishwasher 10 which has a front door 12 which has a switch signaling (LED emitting device) which indicates that the door 12 is beginning to open (Column 4, Lines 30). The LED 22 emitting device helps prevent injury to the shin or lower leg by the user walking

into the open dishwasher (Column 2, Lines 0-43). If the door 12 is closed then there is no LED 22 signal; therefore, the dishwasher has a means to sense and indicate the door is closed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al., as modified by Ellingson, with Burnett to create a dishwashing machine which can signal that the latch portions and latch and tub portions have been released and the door is in an open state and could cause injury to the shins and lower leg of the user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON P. RIGGLEMAN whose telephone number is (571)272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/

Jason P Riggleman

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Supervisory Patent Examiner, Art Unit 1792

Examiner
Art Unit 1792

/J. P. R./
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